

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

**UNITED STATES OF AMERICA,**

**v.**

**Criminal No.: 2:14cr00049-  
HCM-TEM**

**DAVID R. FLYNN,**

**Defendant.**

**MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO SEAL  
DEFENDANT'S MEDICAL/PSYCHOLOGICAL REPORT  
IN SUPPORT OF SENTENCING**

NOW COMES the Defendant, David R. Flynn, by counsel, and states as follows in support of his Motion for an Order sealing Defendant's psychological report in support of sentencing;

1. Mr. Flynn is moving to place this filing under seal due to the confidential nature of the contents of the report;
2. The procedures for sealing documents in a criminal case in this district are set forth in Rule 49 of the Local Rules of Criminal Procedure;
3. Local Rule 49 states that the party seeking to seal documents must provide the Court with the following:
  - 1) A non-confidential description of what is to be sealed;
  - (2) A statement as to why sealing is necessary, and why another procedure will not suffice;
  - (3) References to governing case law; and
  - (4) Unless permanent sealing is sought, a statement as to the period of time the party seeks to have the matter maintained under seal and as to how the matter is to be handled upon unsealing.

4. As to the first provision, Mr. Flynn is seeking to seal a psychological report prepared on Mr. Flynn's behalf by Dr. Weare Zwemer, who is a licensed clinical psychologist;

5. As to the second provision, sealing this document is necessary as the report is akin to a medical record and it contains highly sensitive and very personal information including the results of a mental status evaluation and psychological tests. Mr. Flynn wishes to make the report part of the record and there is no other available mechanism by which to do so while maintaining confidentiality.

6. As to the third provision, *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000), succinctly sets out the standard in this circuit for courts to apply when determining whether it is appropriate to order the sealing of documents. *Ashcraft* states that before entering an order to seal, a district court must "(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives." *Id.*

a. *Ashcraft's* first prong is satisfied by the filing of Mr. Flynn's Motion to Seal as this filing provides the public and any interested parties with notice of Mr. Flynn's intentions and his request to seal documents;

b. *Ashcraft's* second prong is satisfied because there is no viable alternative to sealing.

c. *Ashcraft's* third prong will be satisfied by this Court finding that, under the facts and circumstances of this case, that protecting Mr. Flynn's interest in his ability to provide to the court a complete picture of certain relevant evidence in support of his sentencing, outweighs the interests of the public's right to access; and

7. Finally, as to the fourth provision of Local Rule 49, Mr. Flynn is seeking to have the documents at issue permanently sealed.

WHEREFORE, for the reasons stated above, the Defendant, Mr. Flynn, respectfully moves this Court for an Order sealing the above-referenced pleadings.

Respectfully submitted,

DAVID R. FLYNN  
By Counsel

/s/  
James O. Broccoletti, Esquire

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### CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of December, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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                    /s/                      
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